

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BRIAN H. HARRISON,	:	
Petitioner,	:	
v.	:	CIVIL ACTION NO. 05-00031-BH-B
GRANTT CULLIVER,	:	
Respondent.	:	

ORDER

This action is before the Court on the "Notice of Appeal" (Doc. 52)¹ filed by the petitioner, Brian H. Harrison, which the Court construes as a motion for a certificate of appealability. A petitioner must first obtain a certificate of appealability to appeal a district court's final order in a proceeding brought pursuant to 28 U.S.C. § 2254. See, 28 U.S.C. § 2253(c)(1)(A); Fed.R.App.P.22(b). Such a certificate may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Petitioner has not identified any specific issue or

¹ This notice of appeal was filed within thirty days after this Court denied and dismissed Harrison's § 2254 petition and is therefore timely under Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure.

issues that satisfy the "substantial showing" requirement. While this alone appears to be sufficient grounds for denying his request for a certificate of appealability, the Court also finds, after reviewing the record as a whole, including petitioner's § 2254 petition (Doc. 1), as amended (Doc. 6), the government's answer (Doc. 14), petitioner's various responses (Docs. 15-17, 20 and 22), the recommendation of the Magistrate Judge (Doc. 46), petitioner's objections to the recommendation (Doc. 49) and the Court's Order and Judgment dated June 3, 2008 (Docs. 50 and 51) adopting the recommendation and dismissing petitioner's petition, that petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, petitioner's request for a certificate of appealability be and is hereby **DENIED**.

The Court further construes the notice of appeal as a motion to proceed in *forma pauperis* on appeal. A review of petitioner's financial situation is not required here, however, because the Court **CERTIFIES** that the appeal is without merit and plainly frivolous. See, 28 U.S.C. § 1915(e)(2)(B); Fed.R.App.P. 24(a)(3). Petitioner's motion to proceed in *forma pauperis* be and is therefore **DENIED**.

DONE this 19th day of June, 2008.

s/ W. B. Hand
SENIOR DISTRICT JUDGE